

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JAMES KELLY,

For Online Publication Only

Plaintiff,

-against-

**ORDER**  
21-CV-00321 (JMA)(ARL)

JUDGE JOHN J. LEO, ET AL.,

Defendants.

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**AZRACK, District Judge:**

James Kelly (“plaintiff”), acting pro se, filed another complaint in this Court on January 20, 2021 but did not remit the filing fee nor did he file an application to proceed in forma pauperis. Accordingly, by Notice of Deficiency also dated January 20, 2021, plaintiff was instructed to either, within fourteen (14) days, remit the \$402 filing fee or complete a return the enclosed in forma pauperis application. On January 27, 2021, plaintiff paid the filing fee. On February 16, 2021, plaintiff filed a return of service; however, plaintiff had not presented nor had the Court issued summonses. (ECF No. 9.) Accordingly, by Order dated March 24, 2021, plaintiff was instructed that proper service must be made upon the defendants by April 20, 2021 and cautioned that a failure to do so, absent a showing of good cause, would lead to the dismissal of the complaint for failure to prosecute. The Court noted that plaintiff’s February 16, 2021 service of un-issued summonses with the complaint does not comport with the requirements of Rule 4 and is a nullity. The Court ordered plaintiff to present a summons for each defendant for the Clerk of the Court to issue and, once issued, plaintiff shall effect service and shall file proof of such service with the Court. (ECF No. 10.)

To date, plaintiff has not presented summonses to the Clerk of the Court, nor has he otherwise communicated with the Court about this case. Given plaintiff's non-compliance with the March 24, 2021 Order, it appears that plaintiff is no longer interested in pursuing this case. Accordingly, the complaint is dismissed without prejudice pursuant to Federal Rules of Civil Procedure 4(m) and 41(b).

Although plaintiff paid the fee to commence this action, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis status is denied for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

The Clerk of Court shall mail a copy of this Order to the plaintiff at his last known address.

**SO ORDERED.**

Dated: June 7, 2021  
Central Islip, New York

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/s/ (JMA)  
JOAN M. AZRACK  
UNITED STATES DISTRICT JUDGE